Filed 8/13/19 In re K.W. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re K.W. et al., Persons Coming Under the Juvenile Court Law. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. AL.W., Defendant and Appellant.	B290267 (Los Angeles County Super. Ct. No. 18LJJP00078A-B)

APPEAL from orders of the Superior Court of Los Angeles County, Karin Borzakian, Juvenile Court Referee. Dismissed.

Mitchell Keiter, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Al.W. (Father), the father of K.W. and A.W., appeals from the juvenile court's orders (1) denying Father's request to represent himself and (2) ordering monitored visitation for Father with A.W. even though Father retained joint physical custody of A.W. Because subsequent orders of the juvenile court have rendered the appeal moot, we dismiss it.

FACTUAL AND PROCEDURAL BACKGROUND

A.W.'s family came to the attention of the Department of Children and Family Services (DCFS) after A.W. (then 14 years old) was detained by the police, who found him with a group of known gang members soon after a gang-related shooting in the area. The police were unable to contact his mother, and when they contacted Father (who did not live with the children's mother), Father refused to pick up A.W. and said, "Let DCFS take him." On January 30, 2018, DCFS filed a petition under Welfare and Institutions Code[1] section 300, subdivisions (b) and (j), alleging that Father was "unable to provide [A.W.] with appropriate parental care and supervision due to the child's acting out behavior in the home," and as a result A.W. and K.W. were at risk of serious physical harm and damage.

DCFS did not seek detention of the children, and at the initial hearing the court ordered both children released to the home of their mother, where they had been living. The adjudication and disposition hearing was set for February 21, 2018, but it was continued several times, in part because A.W. had run away and his whereabouts remained unknown. On March 19, 2018, the court granted the request by DCFS to detain

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[1] Subsequent undesignated code references are to the Welfare and Institutions Code.

A.W. from Father; A.W. had been hospitalized after making threats to hurt himself and Father, following a physical altercation with Father. The court ordered A.W. released to his mother and ordered Father to have monitored visitation with him, pending the adjudication and disposition hearing set for May 2, 2018.

At the outset of the jurisdiction and disposition hearing, Father, who was represented by court-appointed counsel, asked that he be permitted to represent himself. The court asked Father if he would be prepared to proceed with the hearing if the court granted his request. Father replied he would not be ready. The court noted the hearing had previously been continued and found that a further delay would "impair the children's right to a prompt resolution of their custody status." The court denied Father's request to represent himself because he was not ready to proceed and because of his past disruptive behavior in court.

Following the adjudication and disposition hearing, the court sustained the petition with amendments and declared both children dependents of the court. The court released the children to the homes of both parents, and ordered that Father have unmonitored visitation with K.W. every other weekend. However, the court ordered that Father's contact with A.W. be limited to monitored visits in a therapeutic setting. Father timely appealed from the May 2, 2018 order denying his motion to represent himself and from the May 14, 2018 disposition order.

We have taken judicial notice of orders made by the juvenile court while Father's appeal has been pending. On January 24, 2019, the court ordered A.W. detained from Father pending a hearing on a supplemental petition filed by DCFS pursuant to section 387, seeking removal of A.W. from Father.

On April 19, 2019, the juvenile court sustained the supplemental petition and found "[t]he previous disposition of the Court has not been effective in the rehabilitation or protection of the minor." The court found it would be detrimental to the child to remain in Father's custody and ordered removal of A.W. from Father's custody. It also ordered monitored visitation for Father with A.W. On April 23, 2019, the court terminated its jurisdiction over A.W. with a juvenile custody order granting A.W.'s mother full legal and physical custody and granting Father monitored visitation with A.W. As to K.W., who was about to turn 18 years old, the court simply terminated its jurisdiction.

Father did not appeal from either the April 19, 2019 order removing A.W. from his custody and ordering monitored visitation, or from the April 23, 2019 order terminating jurisdiction and setting the terms of his custody and visitation. Those orders are now final.

DISCUSSION

Father contends the juvenile court's May 2, 2018 order restricting his access to A.W. to monitored visitation was invalid because the court did not remove A.W. from his custody. He also contends that the court erred by denying his request to represent himself because granting it would have required a continuance.

In light of the court's subsequent orders removing A.W. from Father's physical custody and terminating jurisdiction, we informed the parties of our intention to dismiss the appeal as moot unless Father established it is not moot. Father filed a letter brief arguing these events did not render his appeal moot. DCFS has not taken a position on the merits of the case, but submitted a letter brief opining the appeal is moot.

"An appeal may become moot where subsequent events, including orders by the juvenile court, render it impossible for the reviewing court to grant effective relief." (*In re E.T.* (2013) 217 Cal.App.4th 426, 436; *In re N.S.* (2016) 245 Cal.App.4th 53, 58-59 ["[a]n appellate court will dismiss an appeal when an event occurs that renders it impossible for the court to grant effective relief"].) "As a general rule, an order terminating juvenile court jurisdiction renders an appeal from a previous order in the dependency proceedings moot. [Citation.] However, dismissal for mootness in such circumstances is not automatic, but 'must be decided on a case-by-case basis.' [Citations.]" (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.)

In challenging the order made at the May 14, 2018 hearing that Father's visits with A.W. be monitored in a therapeutic setting, Father contends the court erred by setting these restrictions absent a finding it would be detrimental for A.W. to remain in his physical custody. However, the juvenile court subsequently *did* make this detriment finding on April 20, 2019, and removed A.W. from Father's physical custody. The court therefore corrected the arguable error raised by Father. As a result, the issue whether the court properly ordered monitored visitation when A.W. remained in Father's physical custody has been rendered moot by that later order. (See *In re E.T., supra,* 217 Cal.App.4th at p.436; *Utility Consumers' Action Network v. Public Utilities Com.* (2010) 187 Cal.App.4th 688, 706 [appeal alleging error by agency was rendered moot when agency corrected the error].)

Father requests that the court exercise its discretion to consider his appeal of the visitation order on the merits because it "raises an important question about detriment findings and

visitation orders, on which trial courts would benefit from further guidance." The issues presented in Father's appeal are not issues of widespread significance or public concern. We decline to address the propriety of the juvenile court's moot visitation order.

As for the juvenile court's alleged error in denying Father's request to represent himself, the court's subsequent termination of jurisdiction rendered that issue moot because it is now impossible for us to fashion an adequate remedy. With the juvenile court divested of jurisdiction, there are no future proceedings at which Father could represent himself if we determined that he should be afforded that right. In addition, since the right to represent oneself in a dependency proceeding is statutory rather than constitutional, the erroneous denial of the right to self-representation is not reversible error per se; we would reverse only if it appeared reasonably probable that a result more favorable to Father would have been reached had he represented himself. (*In re A.M.* (2008) 164 Cal.App.4th 914, 928; *In re Angel W.* (2001) 93 Cal.App.4th 1074, 1085.) Father has not made any argument that the outcome of the jurisdiction and disposition hearing or any subsequent hearing would have been different had he been permitted to represent himself. Thus, we conclude the appeal as to this issue is moot as well.

DISPOSITION

The appeal is dismissed.

STONE, J.*

We concur:

PERLUSS, P. J.

FEUER, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.